IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1908 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

KANTILAL GORDHANBHAI GANDHI DECD THROUGH HEIR AND LR.

Versus

VASUDEV MANGALDAS KACHHIA

Appearance:

MR SB VAKIL for Petitioners

MR TRILOK J.PATEL FOR MR JITENDRA M PATEL

for Respondents

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/07/98

ORAL JUDGEMENT

This is tenant's revision under section 29(2) of the Bombay Rent Act.

The revisionist was tenant of the respondent in

the disputed accommodation on Rs.12/- p.m. He fell in arrears of rent from 1.1.1964 to 31.1.1969. Notice of demand was served in accordance with law on the revisionist but he neither replied the notice nor complied with the direction contained in the notice. Accordingly the suit for eviction was filed in which eviction was also sought on the ground that premises is reasonably and bonafide required by the landlord.

The revisionist contested the suit denying that the premises is required reasonably and bonafide by the landlord for his personal use. It was also pleaded in the written statement that the rent upto 1966 was paid. The tenant showed readiness and willingness to pay the remaining rent. The dispute regarding standard rent was also raised in the written statement.

The Trial Court found that the premises was not reasonably and bonafide required by the landlord. It further found that decree for eviction under section 12(3)(a) could be passed because the tenant revisionist was in arrears of rent for more than six months which he did not pay after service of notice of demand.

An appeal was preferred which was dismissed. It is, therefore, this revision.

The finding of the two Courts below that the premises is not reasonably and bonafide required by the landlord for his personal use is concurrent and concluded finding of fact on which no interference is required in this revision.

Only point for the determination is whether the decree for eviction under section 12(3)(a) of the Bombay Rent Act was passed in accordance with law or not.

Learned Counsel for the respondent contended that on this question also there is concurrent finding of the two Courts below hence, revisional Court will not interfere with such finding. I am however, unable to agree with this contention because it is not a pure finding of fact rather it is mixed question of law and fact whether on the facts established on record section 12(3)(a) could be applied or not. Learned Counsel for the revisionist contended that instead of section 12(3)(a) section 12(3)(b) is attracted and since the tenant has deposited rent he should have been relieved from ejectment. This legal point is required to be considered whether section 12(3)(a) is applicable or section 12(3)(b).

By now it is settled law that if section 12(3)(a) on facts is established the Court has no alternative but to pass decree for eviction of the tenant. It is equally settled view of the Apex Court that if section 12(3)(a) is applicable then section 12(3)(b) cannot be availed of by the landlord. Consequently the tenant also cannot take benefit of this section in his favour.

Contention of learned Counsel for the revisionist has been that the rent after 1966 was also paid but by mistake it was not so mentioned in the written statement and actually rent upto date was paid and no receipt was issued by the landlord. However, if it was a case of mistake then mistake could have been rectified by getting written statement amended. So far the written statement has not been amended. Consequently the revisionist cannot be permitted to say that the rent beyond 1966 has been paid. Any evidence contrary to pleadings cannot be considered by the Court nor can be read as admissible evidence.

So far as the payment of rent upto 1966 is concerned, it was a pure question of fact which was disbelieved by the two Courts below. The Appellate Court has mentioned certain admissions of the defendant in his cross examination. He admitted in para 7 of the cross examination that he did not pay any rent to the plaintiff after receipt of notice in suit. In para 9 he admitted that he has not filed any application for fixation of standard rent. In para 10 he admitted in cross examination that he has no knowledge as to from which date the rent fell due. On these admissions the Courts below were justified in disbelieving the defendant's plea of upto date payment of rent.

It was next contended by learned Counsel for the revisionist that since dispute regarding standard rent was raised by the tenant section 12(3)(a) is not applicable. It may further be mentioned that this contention is legally not tenable. It is equally settled view that if the tenant wants to raise dispute regarding standard rent he must raise it at the earliest in reply to the notice of demand. Admittedly, the defendant did not raise any such dispute in as much as on his own admission he did not send any reply to the notice of demand. Further, he admitted in para 9 of cross examination that he has not filed any application for fixation of standard rent. Thus, the tenant has not filed any application for fixation of standard rent within a month of service of notice of demand nor has

raised the dispute regarding standard rent within a month of service of notice of demand. Consequently the so called dispute of standard rent raised in the written statement cannot be said to be bonafide dispute regarding standard rent. It may also be mentioned that the so called belated dispute regarding standard rent was not bonafide dispute as according to the landlord the rent was Rs.12/- p.m. and the Trial Court has fixed the same rent to be standard rent. Thus, there was no bonafide dispute regarding standard rent raised by the tenant. Consequently section 12(3)(a) was attracted in as much as the tenant revisionist was in arrears of rent for more than six months and he failed to pay the same within a month of service of notice of demand and also failed to raise dispute regarding standard rent within the same period. Rent was payable monthly. As such on the facts established on record section 12(3)(a) was rightly applied by the two Courts below. Thus, mixed question of fact and law was correctly answered by the two Courts below. Hence, decree of the two Courts below can be said to be in accordance with law. As such no interference in this revision is required and the revision deserves to be dismissed.

The contention of learned Counsel for the revisionist that section 12(3)(b) is attracted cannot be upheld once it is held that section 12(3)(a) is applicable.

Learned Counsel for the revisionist requested for some time to vacate the accommodation. Request is accepted. Revision is dismissed. Parties shall bear their own costs. The revisionist is permitted to vacate the suit accommodation within a period of six months from today on his filing usual undertaking in this Court within three weeks from today.

Sd/-
(D.C.Srivastava,J.)

m.m.bhatt